



## Decision

**Matter of:** Excelsior Defense, Inc.

**File:** B-423106

**Date:** January 16, 2025

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participated in the preparation of the decision.

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### DIGEST

1. Protest challenging protester's elimination from competition is denied where agency reasonably excluded protester for failing to submit a signed limitation on subcontracting certification.
  2. Protest challenging agency's evaluation of awardee's quotation is denied where agency's evaluation was reasonable and consistent with the terms of the solicitation.
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### DECISION

Excelsior Defense, Inc., a service-disabled veteran-owned small business (SDVOSB) of St. Petersburg, Florida, protests its exclusion from competition and the issuance of an order to Culpepper and Associates Security Services, Inc. (CASS), an SDVOSB of Atlanta, Georgia, under request for quotations (RFQ) No. 36C24824Q1351, issued by the Department of Veterans Affairs (VA) for unarmed security guard services at the Orlando, Florida VA Medical Center. The protester argues that the agency improperly eliminated Excelsior from the competition and unreasonably evaluated CASS's quotation.

We deny the protest.

### BACKGROUND

The VA issued the solicitation as a set-aside for SDVOSB concerns on July 23, 2024, under the General Services Administration's Federal Supply Schedule (FSS) using the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4. Agency

Report (AR), Exh. 4, RFQ at 3, 60.<sup>1</sup> The RFQ sought quotations to provide unarmed security guard services throughout the Orlando VA healthcare system hospitals, clinics, and administrative support buildings. *Id.* at 43. The solicitation contemplated the issuance of a fixed-price indefinite-delivery order with a 12-month base period and four 12-month options. *Id.* at 44. The RFQ provided that award would be made on a best-value tradeoff basis, considering the following factors: technical, experience, and price. *Id.* at 83.

The agency received six quotations by the August 19 deadline. Memorandum of Law (MOL) at 2; Contracting Officer's Statement (COS) at 2. Before sending quotations to the technical evaluation team for review, the contracting officer conducted a preliminary compliance review. COS at 2. Among other things, the contracting officer reviewed the quotations to determine whether each quotation contained a completed, signed limitation on subcontracting (LOS) certification. *Id.* The contracting officer determined that a signed certification was missing from three of the quotations, including the quotation from Excelsior. *Id.*; AR, Exh. 7, Administrative Review. Of the three remaining quotations, the contracting officer found that two of the vendors had failed to submit other required documentation. COS at 2. Thus, five of the quotations did not pass the compliance review because they were found to be incomplete and, as a result, they were excluded from further consideration. *Id.* The VA evaluated the remaining quotation and made award to CASS on October 1.<sup>2</sup> *Id.*; AR Exh. 8, FSS Award Documentation at 4. The VA posted the award notice to SAM.gov on October 2. AR, Exh. 12, Award Announcement.

The protester filed an agency-level protest with the VA on October 3. MOL at 3. The agency denied the protest on October 7. *Id.*; Protest, exh. A, Agency-Level Protest Decision at 3. Excelsior filed the instant protest with our Office on October 16.

## DISCUSSION

Excelsior argues that the agency unreasonably excluded its quotation from consideration for issuance of a task order, and that the agency's evaluation of the awardee's proposal was unreasonable. Protest at 1-2. The agency responds that Excelsior was properly eliminated from the competition for failing to submit a signed

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<sup>1</sup> References to the RFQ are to the amended version, provided at exhibit 4 of the agency report. Unless otherwise noted, citations to the record are to the pages in the Adobe PDF documents.

<sup>2</sup> Excelsior elected to proceed with its protest without counsel, and our Office did not issue a protective order for this protest. As such, our discussion of some aspects of the agency's evaluation is, necessarily, general in nature to avoid reference to non-public information.

LOS certification with its quotation. MOL at 11. We have reviewed the protester's arguments and find that none afford a basis to sustain the protest.<sup>3</sup>

## LOS Certification

Excelsior argues that the solicitation did not explicitly require submission of a signed LOS certification, and thus the agency's decision to exclude the protester from the competition was improper. Protest at 1. In the alternative, the protester contends that because Excelsior had submitted a certification which "was inadvertently left unsigned," the error was an "administrative oversight" that could have been "remedied through a clarification request." *Id.*

Here, the VA set aside the procurement for SDVOSB concerns pursuant to the Veterans First Contracting Program, as implemented in subpart 819.70 of the VA Acquisition Regulation (VAAR). 38 U.S.C. §§ 8127- 8128; VAAR § 819.7004. The regulation provides, among other things, that "a contracting officer may award a contract under this subpart only after obtaining from the offeror a certification that the offeror will comply with the limitations on subcontracting requirement as provided in the solicitation and which shall be included in the resultant contract." VAAR § 819.7004(b). In this regard, the regulation requires that "[t]he formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal," and "[t]he Government will not consider offers for award from offerors that do not provide the certification with their bid, quotation, or proposal, and all such responses will be deemed ineligible for evaluation and award." VAAR § 819.7004(b)(1), (b)(2).

To implement those VAAR requirements, the RFQ included VAAR clause 852.219-75, VA Notice of Limitations on Subcontracting – Certificate of Compliance for Services and Construction. RFQ at 72. The clause states, in relevant part:

(a) Pursuant to 38 U.S.C. 8127(l)(2), the offeror certifies that—

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<sup>3</sup> Excelsior initially expressed a "concern" that the contracting officer's ownership of a trucking company created a potential conflict of interest under section 3.101-1 of the FAR. Protest at 2. The agency substantively responded to this allegation in the agency report. MOL at 11. The protester neither refuted the agency's response nor did it pursue this allegation in its comments to the agency report. See Comments at 1-3. Where, as here, an agency provides a detailed response to a protester's assertions and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issue in question is unreasonable or improper. 4 C.F.R. § 21.3(i)(3); *C2C Innovative Sols., Inc.*, B-416289, B-416289.2, July 30, 2018, 2018 CPD ¶ 269 at 6. As such, we consider this allegation to be abandoned and do not discuss it further. *DigiFlight, Inc.*, B-419590, B-419590.2, May 24, 2021, 2021 CPD ¶ 206 at 4.

(1) If awarded a contract (see FAR 2.101 definition), [vendor] will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows:

(i) [X] Services. In the case of a contract for services (except construction), the contractor will not pay more than 50% of the amount paid by the government to it to firms that are not certified SDVOSBs listed in the SBA certification database as set forth in 852.219-73 or certified VOSBs listed in the SBA certification database as set forth in 852.219-74. Any work that a similarly situated certified SDVOSB/VOSB subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Other direct costs may be excluded to the extent they are not the principal purpose of the acquisition and small business concerns do not provide the service as set forth in 13 CFR 125.6.

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(d) Offeror completed certification/fill-in required. The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

*Id.* at 72-73. The solicitation then required the vendor to submit a certification, where the vendor agreed to comply with the LOS terms. *Id.* at 73. A signature and date, among others, were required with the certification.<sup>4</sup> *Id.*

Where, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the

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<sup>4</sup> Specifically, the certification after VAAR clause 852.219-75 states:

Certification

I hereby certify that if awarded the contract, [insert name of offeror] will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute this certification on behalf of [insert name of offeror].

Printed Name of Signee: \_\_\_\_\_

Printed Title of Signee: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Company Name and Address: \_\_\_\_\_

RFQ at 73.

solicitation and applicable procurement laws and regulations. *Agile-Bot II, LLC*, B-419350.3, B-419350.4, June 16, 2021, 2021 CPD ¶ 231 at 5. Here, our review finds that the plain language of the solicitation unambiguously required vendors to submit a signed certification of compliance with the LOS terms. RFQ at 72-73. As such, the protester's first contention--that the RFQ did not explicitly require the submission of a signed LOS certification--finds no support in language of the solicitation and is wholly without merit.

Next, we turn to the protester's alternative argument. According to Excelsior, the agency should not have excluded Excelsior from consideration for award because the lack of a signature on the certification was an administrative oversight that "could have been easily remedied through a clarification request." Protest at 1. Here, the VA found--and the protester does not dispute--that Excelsior's quotation failed to include a signature on its LOS certification. AR, Exh. 7, Administrative Review; Protest at 1 ("Excelsior Defense acknowledges that an outdated version of VAAR 852.219-75 was submitted in our proposal and was inadvertently left unsigned."); see AR, Exh. 11, Protester Proposal at 10. Thus, consistent with the terms of the solicitation, the agency concluded that Excelsior's quotation was ineligible for award. RFQ at 73 ("The formal certification must be completed, signed and returned with the offeror's [quotation] . . . The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.").

As our Office has explained, the LOS certification requirement, which imposes substantial legal obligations on the contractor, is a material term of a solicitation. See *Hamilton Pac. Chamberlain, LLC*, B-422568.2, Aug. 14, 2024, 2024 CPD ¶ 193 at 3; see *Daniels Bldg. Co.*, B-421680, July 24, 2023, 2023 CPD ¶ 177 at 3. Consequently, we find no basis to disturb the agency's conclusion that Excelsior was ineligible for award where the firm failed to submit a signed certification, as required by the solicitation. *Citizen Contracting Grp., LLC*, B-420810, Sept. 13, 2022, 2022 CPD ¶ 238 at 4 (finding reasonable the agency's decision to eliminate protester from competition where RFQ required, and protester failed to submit, LOS certification).

Despite the protester's contentions to the contrary, the failure to submit a signed LOS certification was neither administrative nor was it correctable through clarifications. Clarifications are limited exchanges between the agency and offerors that may occur when award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. See FAR 15.306(a); see *Savvee Consulting, Inc.*, B-408623, B-408623.2, Nov. 8, 2013, 2013 CPD ¶ 265 at 6. Here, however, the solicitation specifically advised vendors that failure to comply with the LOS requirement would result in the quotation being ineligible for award. RFQ at 73. As such, vendors were on notice that the requirement was material to the solicitation. *MSC Indus. Direct Co., Inc.*, B-416255, July 12, 2018, 2018 CPD ¶ 238 at 4 n. 2. While an agency may engage in clarifications to give a vendor an opportunity to clarify aspects of its quotation or resolve minor or clerical errors, clarifications cannot be used to cure

deficiencies or material omissions--as is the case here--in a quotation or otherwise revise a quotation. See *Arbinger Co.--Advisory Opinion*, B-413156.21, Oct. 14, 2016, 2017 CPD ¶ 100 at 6. Providing a vendor the opportunity to revise its quotation and cure a material omission--i.e., a signed LOS certification--would constitute discussions, not clarifications, because that would require the submission of information necessary to make the quotation acceptable. *Savvee Consulting, Inc., supra*; *MSC Indus. Direct Co., Inc., supra* (finding, because failure to include information would result in elimination from competition, requirement was material, and protester could only correct the defect through discussions, rather than clarifications); see FAR 15.306(a), (d).

Moreover, the agency was under no obligation to seek clarifications or conduct discussions with the protester. Our review finds that nothing in the solicitation provided for discussions or required the agency to engage in clarifications. As such, in the absence of a provision allowing for discussions, our Office has consistently explained that there is no requirement under FAR subpart 8.4 that an agency seek clarifications or otherwise conduct discussions with vendors. FAR 8.404(a); *IntelliBridge, LLC*, B-421560.9, Aug. 8, 2024, 2024 CPD ¶ 188 at 6; *Avalon Integrated Servs. Corp.*, B-290185, July 1, 2002, 2002 CPD ¶ 118 at 4. Consequently, we find no basis to conclude that the agency's decision to exclude Excelsior from the competition without seeking clarifications was improper.

#### Awardee's Quotation

Excelsior also argues that the task order award to CASS was unreasonable because the awardee failed to comply with the requirements of the solicitation.<sup>5</sup> Protest at 2. Specifically, Excelsior argues that the awardee "fail[ed] to meet local business requirements and state regulations" by not having a valid state security license. Comments at 2; Protest at 2.

As part of technical submissions, vendors were instructed to submit "a copy of your Class B, BB or AB security license(s) in accordance with Florida Statue title XXXII,

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<sup>5</sup> As a preliminary matter, the agency argues that the protester is not an interested party to challenge the evaluation of the awardee's proposal because Excelsior was "properly eliminated from the competition." MOL at 11. Despite our conclusion above--that the agency's decision to eliminate Excelsior from the competition was reasonable--we find that the protester is an interested party to challenge the agency's evaluation of CASS's quotation. The record reflects that the agency found all quotations--other than the quotation submitted by CASS--to be incomplete and therefore ineligible for award. AR, Exh. 7, Administrative Review; COS at 2. As such, were we to sustain the Excelsior's challenge to the awardee's quotation, there would be no other vendor in line for award ahead of the protester. Under such circumstances, the protester is an interested party to raise the argument. *MicroTechnologies, LLC*, B-415214, B-415214.2, Nov. 22, 2017, 2018 CPD ¶ 48 at 7 n. 10 (finding that offeror whose proposal has been determined ineligible for award is an interested party to protest evaluation of awardee's proposal if awardee is evaluated as submitting the only technically acceptable proposal).

chapter 493 Chapter 493 Section 6301- 2012 Florida Statutes - The Florida Senate (flsenate.gov).” RFQ at 80. Relevant here, the RFQ provided that a quotation would be “evaluated to the extent to which it can meet and/or exceed the Government’s requirements as outlined in the solicitation and based on the information requested in the instructions to quoters section of the solicitation.” *Id.* at 84. Here, the awardee submitted as part of its quotation its active security license, showing CASS was licensed and regulated under the provisions of Chapter 493. AR, Exh. 13, CASS Quotation at 30. As such, the agency found that CASS had complied with the requirement to submit a copy of its license with its quotation. AR, Exh. 7, Administrative Review; see RFQ at 80. We find no basis to object to the agency’s finding that CASS complied with the requirement to have a valid state security license.<sup>6</sup>

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>6</sup> For example, Excelsior questions the “legality of [awardee’s] Florida Security License.” Protest at 2. The thrust of Excelsior’s protest allegation is that the VA should not have accepted the awardee’s Florida security license because, according to the protester, CASS does not have a state-required physical address. Here, the solicitation only required the VA to determine whether vendors submitted the information that was requested in the instructions section of the solicitation--*i.e.*, whether vendors submitted the required license. RFQ at 80 (“Submit with your quote a copy of your . . . security license(s) in accordance with Florida Statute. . . .”); *id.* at 84. The solicitation did not require the VA to look beyond a validly issued Florida security license to determine whether a firm actually complied with the requirements of the Florida statute. An allegation challenging the validity of a license or certificate issued by an authorized licensing authority is not a matter we will consider. See *Affiliated Van Line, Inc.*, B-220450, Dec. 13, 1985, 85-2 CPD ¶ 660 at 2 (finding that certificate submitted by awardee was valid on its face and agency was not required to go beyond such a certification). Regardless, the record here demonstrates that agency did confirm with CASS that the firm had a physical address in the state of Florida. AR, Exh. 9, Post Award Conference Minutes at 1.